

REMARKS

Applicant respectfully requests reconsideration of this application as amended. Claims 1 and 91 have been amended. Claims 2-80 were cancelled without prejudice. No new claims have been added. Therefore, claims 1 and 81-103 are presented for examination.

35 U.S.C. § 102 Rejection

Claims 1, 81, 83, 84-92, 95, 96, 98-101 and 103 are rejected under 35 U.S.C. §102(b) as being anticipated by Payton, U.S. Patent No. 5,790,935 ("Payton").

Claim 1 recites:

A method comprising:
broadcasting first content descriptors to one or more clients, the first content descriptors describing content for broadcast;
prioritizing the content in response to a feedback received from the one or more clients, wherein the feedback is automatically generated transparent to the one or more clients based on an amount of content consumed by the one or more clients;
broadcasting second content descriptors, the second content descriptors describing the prioritized content for broadcast; and
broadcasting the prioritized content to the one or more clients.
(emphasis added)

Applicant respectfully disagrees with the Examiner's characterization of the Payton. For example, regarding "prioritizing the content in response to a feedback received from the one or more clients, wherein the feedback is automatically generated transparent to the one or more clients based on an amount of content consumed by the one or more clients", the Examiner cites the following sections: col. 3, lines 13-14, col. 5, lines 22-24, col. 6, lines 41-42, and col. 6, lines 48-50, but none of these sections teach or reasonably suggest the above-mentioned feature of claim 1.

Payton discloses the “central distribution server *merges common requests, places them in a queue based on relative demand*, and then broadcast them to all of the subscribers.” (col. 3, lines 13-14; emphasis added) Payton further discloses a “scheduling processor *merges the lists of recommended items to prioritize the items from the most to the least frequently recommended* and places identifiers for these items in a refresh queue for broadcast over the digital transport system.” (col. 5, lines 22-24; emphasis added) Payton further discloses “the system could just *record the use of the item as a positive vote . . . [and the] information about regular viewing habits can be used to augment the subscriber profile to improve prediction.*” (col. 6, lines 42-44 and 48-50; emphasis added)

Neither in any of the sections referred to by the Examiner nor anywhere else does Payton teach or reasonably suggest “prioritizing the content in response to a feedback received from the one or more clients, wherein the feedback is automatically generated transparent to the one or more clients based on an amount of content consumed by the one or more clients” as recited by claim 1.

Applicant respectfully reminds the Examiner that anticipation under 35 U.S.C. Section 102 requires every element of the claimed invention be identically shown in a single prior art reference. The Federal Circuit has indicated that the standard for measuring lack of novelty by anticipation is strict identity. “For a prior art reference to anticipate in terms of 35 U.S.C. Section 102, every element of the claimed invention must be identically shown in a single reference.” (In Re Bond, 910 F.2d 831, 15 USPQ.2d 1566 (Fed. Cir. 1990); emphasis added). Applicant submits that Payton fails to identically show every element of claim 1. Accordingly, Applicant respectfully requests the withdrawal of the rejection of claim 1 and its dependent claims.

Claims 91, 95 and 99 contain limitations similar to those of claim 1 and thus, Applicant respectfully requests the withdrawal of the rejection of claims 91, 95 and 99 and their dependent claims.

35 U.S.C. § 103 Rejection

Claims 82, 93, 94, 97 and 102 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Payton.

Claims 82, 93-94, 97 and 102 depend from one or more of 1, 91, 95 and 99 and thus include all the limitations of their corresponding base claim. Accordingly, Applicant respectfully requests the withdrawal of the rejection of claims 82, 93, 94, 97 and 102.

Conclusion

In light of the foregoing, reconsideration and allowance of the claims is hereby earnestly requested.

Invitation for a Telephone Interview

The Examiner is requested to call the undersigned at (303) 740-1980 if there remains any issue with allowance of the case.

Request for an Extension of Time

Applicant respectfully petitions for an extension of time to respond to the outstanding Office Action pursuant to 37 C.F.R. § 1.136(a) should one be necessary. Please charge our Deposit Account No. 02-2666 to cover the necessary fee under 37 C.F.R. § 1.17(a) for such an extension.


Charge our Deposit Account

Please charge any shortage to our Deposit Account No. 02-2666.

Respectfully submitted,

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